IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1699

MARK H. HORODNER,

Appellant,

against

ARNOLD R. FISHER, as Commissioner of the New York State Department of Motor Vehicles, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York and HENRY F. O'BRIEN, as District Attorney of Suffolk County, New York,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

MOTION TO DISMISS

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellee
Arnold R. Fisher and
Appellee Pro Se
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3394

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

ROBERT S. HAMMER
Assistant Attorney General
of Counsel

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Appellees Arnold R. Fisher, Commissioner of Motor Vehicles of the State of New York and Louis J. Lefkowitz, Attorney General of the State of New York, respectfully move the Court pursuant to Rule 16 to dismiss this appeal on the ground that appellant has failed to raise a substantial federal question.

Opinions Below

The opinion of the Court of Appeals of the State of New York is reported at 38 N Y 2d 680, 345 N.E. 2d 571 and 382 N.Y.S. 2d 28. It is reproduced as Appendix A to the

jurisdictional statement. The decision of the Appellate Division of the Supreme Court, Second Department, was rendered without opinion. It is reported at 46 A D 2d 887 and 363 N.Y.S. 2d 315 and is reproduced as Appendix B to the jurisdictional statement. The opinion of the Supreme Court, Suffolk County is unreported. It is reproduced as Appendix C to the jurisdictional statement.

Jurisdiction

The opinion of the Court of Appeals was rendered on February 26, 1976. Notice of Appeal was filed on May 11, 1976. Appellant invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(2).

Question Presented

Whether New York Vehicle & Traffic Law § 510(2)(a)(iv), requiring the Commissioner of Motor Vehicles to summarily revoke without further hearing the license of a driver convicted of certain offenses, violates the due process clause of the Fourteenth Amendment to the Constitution?

Statute Involved

New York Vehicle & Traffic Law § 510 provides in pertinent part:

> 2. Mandatory revocations and suspensions. a. Mandatory revocations. Such licenses shall be revoked and such certificates of registration may also be revoked where the holder is convicted:
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> • • •
>
> (iv) of a third or subsequent violation, committed within a period of eighteen months, any provision of

> section eleven hundred eighty of this chapter, any ordinance or regulation limiting the speed of motor vehicles and motorcycles or any provision constituted a misdemeanor by this chapter, not included in subparagraphs (i) or (iii) of this paragraph, except violations of subdivision one of section three hundred seventy-five of this chapter or of subdivision one of section four hundred one of this chapter and similar violations under any local law, ordinance or regulation committed by an employed driver if the offense occurred while operating, in the course of his employment, a vehicle not owned by said driver, whether such three or more violations were repetitious of the same offense or were different offenses.

McKinney's, New York Consolidated Laws, Book 62A, Part I, p. 507.

Statement of the Case

Appellant's driver's license was summarily revoked on September 28, 1973 by the Commissioner of Motor Vehicles pursuant to N.Y. Vehicle & Traffic Law § 510(2)(a)(iv) upon the receipt of certificates of appellant's conviction of three speeding violations committed within a period of eighteen months.

Appellant never suggested that he was not guilty of the three speeding offenses or of the misdemeanor of operating while unlicensed of which he had also been subsequently convicted upon his plea of guilty (A 1).*

Instead, prior to being sentenced on the unlicensed operation conviction, appellant sought a judgment pursuant to N.Y. CPLR Article 78 setting aside both the license revocation and the plea of guilty upon the grounds that the

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* Numbers in parentheses preceded by letters refer to the appendices to appellant's jurisdictional statement.

failure of the Commissioner of Motor Vehicles afford him a hearing prior to revoking his license denied him due process under the Fourteenth Amendment and that the unlicensed operation conviction predicated upon the revocation was similarly tainted (C 1-2).*

Special Term dismissed petitioner's claim holding both sections 510 and 511** to be reasonable exercises of the State's police power and to comport with due process by virtue of the prior judicial hearings afforded to petitioner (C 3-4).

The Appellate Division affirmed without opinion (B 1).

A further appeal on constitutional grounds was taken to the New York Court of Appeals which unanimously upheld the statute.

The Court held that requirements of due process were satisfied by the opportunity to defend against the traffic charges (A 7); a right that is further enhanced by the provisions of N.Y. Vehicle & Traffic Law § 1807 whereby a motorist is warned that conviction of a traffic offense may result in the suspension or revocation of his license coupled with the requirement of N.Y. Vehicle & Traffic Law § 510(7) that summary revocation may not be had unless the Commissioner is satisfied that § 1807 had been complied with. In addition, the Court noted the availability of judicial review to correct misidentification of the driver; miscalculation of the time in which the traffic offenses were

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* Appellant was unsuccessful in obtaining federal review of this claim and enjoining another similar prosecution in *Horodner* v. *Cahn*, 360 F. Supp. 602, 604 (E.D.N.Y. 1973) case being dismissed on the ground that federal interference in a pending state prosecution was barred by *Younger* v. *Harris*, 401 U.S. 37 (1971).

** The constitutionality of the unlicensed operation conviction, N.Y. Vehicle & Traffic Law § 511 is not an issue on this appeal, it not having been raised in the jurisdictional statement, S. Ct. Rules, Rule 15(c).

committed or to correct the record where a conviction employed as a predicate for revocation has been reversed on appeal (A 8).

In upholding the statute the Court of Appeals noted the similarity of the New York law to other state statutes which have been summarily upheld by this Court against constitutional challenges virtually identical to that in the instant case (A 5-8).

ARGUMENT

Appellant has failed to raise a substantial federal question requiring plenary consideration by this Court.

A state statute providing for summary revocation of a a driver's license for repeated traffic offenses comports with the requirements of due process of law if, as in the instant case, the driver has an opportunity for judicial scrutiny of the underlying facts, *Stauffer* v. *Weedlum*, 188 Neb. 105, 195 N.W. 2d 218 (1972) app. dsmd. 409 U.S. 972 (1973); *Abraham* v. *State of Florida*, 301 So. 2d 11 (Fla.) app. dsmd. 420 U.S. 941 (1974). See also *Jennings* v. *Mahoney*, 404 U.S. 25 (1971).

The similarity of the *Stauffer* and *Abraham* cases to the case at bar gives them full precedential value, *Hicks* v. *Miranda*, 422 U.S. 332, 343-344, 345, n. 14 (1975).

In attempting to demonstrate the substantiality of his claim, appellant mistakenly relies upon *Bell* v. *Burson*, 402 U.S. 535 (1971) as authority for the necessity of a pre-revocation hearing. Unlike the instant case where the statute at bar is designed to promote traffic safety (A 4-5), the only purpose of the financial security statute in *Bell* "is to obtain security from which to pay any judgments against the licensee resulting from [an] accident," 402 U.S. at 540. See also: *Perez* v. *Campbell*, 402 U.S. 637,

646-648 (1971). *Bell* involved the mandatory suspension of the license of an uninsured motorist who failed to post security when a suit for damages was brought but *before* the driver's liability was established. A complete adjudication was not deemed necessary, since this could come only after a trial upon the merits. The Court merely held that

> "procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee." 402 U.S. at 540.

In the instant case, there has been a full adjudication of the merits of the underlying offenses by virtue of the judgments of conviction. Appellant has already had the "notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective", required by due process (emphasis in original), *id.* at 542.

Appellant stands duly convicted of traffic offenses, whereas in the *Bell* case the motorist's liability had not been established. Thus, this case is closer to *Perez* v. *Campbell, supra,* where a state statute which suspended the license of a motorist against whom had been entered an unsatisfied judgment was voided, but only because of its conflict with the Federal Bankruptcy Act. Patently, both the purpose of the statute construed in *Bell* and the underlying rationale of that decision are totally inapplicable to the case at bar.

Other authorities relied upon by appellant are equally inapposite:

The apparent lack of administrative or judicial machinery to correct clerical errors appearing in the records of the convicting courts was a major factor in the cases of *Reese* v. *Kassab,* 334 F. Supp. 744, 747 (W.D. Pa. 1971)

and *Warner* v. *Trombetta,* 348 F. Supp. 1068, 1071 (N.D. Pa. 1972) affd. 410 U.S. 919 (1973) which held unconstitutional Pennsylvania statutes which required the revocation of the licenses of those drivers who respectively, were habitual traffic offenders or who left the scene of an accident. Moreover, there is no evidence that these statutes contained safeguards similar to Vehicle & Traffic Law § 1807(1) which might have warned those motorists of the possible consequences of the guilty pleas entered in those cases, 334 F. Supp. at 745-746; 348 F. Supp. at 1068, 1070. Similarly, a case such as *Cicchetti* v. *Lucey,* 377 F. Supp. 215 (D. Mass. 1974) involving defective court records would be remediable under existing procedures. The situations that occurred in those cases simply would not occur under the New York statute.

The right of the states to enact laws to promote traffic safety and to attempt to stem the annual slaughter on the public roads has been recognized by this Court, *Perez* v. *Campbell, supra,* 402 U.S. at 650-652, 657 (1971). Even cases relied upon by appellees concede this important state interest, *Reese* v. *Kassab, supra,* 334 F. Supp. at 747, 752; *Warren* v. *Trombetta, supra,* 348 F. Supp. at 1071. See also: *Brockway* v. *Tofany,* 319 F. Supp. 811, 815, 817 (S.D.N.Y. 1970).

New York Vehicle & Traffic Law § 510(2)(a)(iv) advances this important state interest by removing from the highways those who habitually flout the traffic laws. As we have demonstrated herein, the means by which this is accomplished clearly satisfies the requirements of due process.

CONCLUSION

The appeal should be dismissed for want of a substantial federal question.

Dated: New York, New York, June 21, 1976.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellee
Arnold R. Fisher and
Appellee Pro Se

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

ROBERT S. HAMMER
Assistant Attorney General
of Counsel